

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1400

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

B
P/S

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ROBERT L. MONIN, a/k/a TODD R. MONI,
Defendant-Appellant.

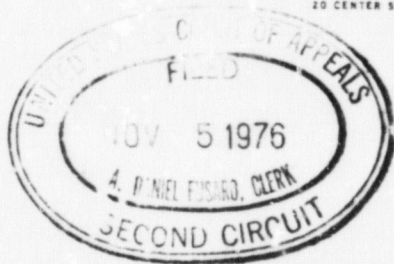
ON APPEAL FROM A JUDGMENT OF CONVICTION OF THE UNITED
STATES DISTRICT COURT FOR THE WESTERN DISTRICT
OF NEW YORK.

APPELLEE'S APPENDIX

RICHARD J. ARCARA,
United States Attorney,
Western District of New York,
Attorney for Appellee,
502 United States Courthouse,
Buffalo, New York 14202.

ROGER P. WILLIAMS,
Assistant United States Attorney,
of Counsel.

BATAVIA TIMES, APPELLATE COURT PRINTERS
A. GERALD KLEPS, REPRESENTATIVE
20 CENTER ST., BATAVIA, N. Y. 14020
716 842-0487



PAGINATION AS IN ORIGINAL COPY

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Pre-trial Statement.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:
Plaintiff	: CR. NO. 75-251
-VS-	:
ROBERT L. MONIE, a/k/a TODD R. MONI,	:
Defendant	: <u>PRE-TRIAL STATEMENT</u>

The United States of America, by its attorney, Richard J. Arcara, United States Attorney in and for the Western District of New York, Roger P. Williams, Assistant United States Attorney, of counsel, submits the following statement of facts so that the Court may determine whether or not the conduct by the defendant is proscribed by the statute under which he is indicted, namely, Title 15, United States Code, Sections 1644(a) and (c):

Count I of the indictment charges a violation of Section 1644(a) which makes it a crime to ". . . knowingly in a transaction affecting interstate or foreign commerce, use or attempt or conspire to use any . . . fictitious credit card to obtain money, goods, services, or anything else of value which within any one year period has a value aggregating \$1,000 or more." To achieve the aggregate of \$1,000 in a one year period, this count encompasses both the obtaining of goods from various mail order houses and the obtaining of airline tickets from Allegheny Airlines, Inc.

Count II charges a violation of Section 1644(c). That section makes it a crime for anyone to ". . . knowingly receive, conceal, use, sell, or transport in interstate

Pre-trial Statement.

or foreign commerce one or more tickets for interstate or foreign transportation, which (1) within any one year period have a value aggregating \$500 or more and (2) have been purchased or obtained with one or more . . . fictitious . . . credit cards." Under this count the defendant is charged within the time period set forth with obtaining and using airline tickets having an aggregate value of approximately \$5,900.

Simply put, the proof in support of Count I would show that the defendant, during the time charged, and on or about the date set forth in Schedule I, attached hereto and made a part hereof, called Allegheny Airlines, booked the various flights set forth in that schedule at the prices indicated thereon. In making the phone calls to the airlines, the defendant represented himself to be Todd R. Moni on some occasions, Michael Mattison on others and James M. Mattison on yet other calls. In each of those situations he told the Allegheny representative that he was a holder of a certain American Express Credit Card and asked that the tickets he ordered be charged to his American Express Charge Card and mailed to him at 1331 Clinton Street, Buffalo, New York. The tickets were then mailed to him from the Greater Pittsburgh International Airport, Pittsburgh, Pennsylvania, and those tickets were utilized by him to travel to the cities designated on Schedule I.

The merchandise ordered by the defendant and which is a portion of the subject matter of Count I only is contained on Schedule II annexed hereto and made a part hereof. Only those items preceded by a check form the subject matter of Count I of the indictment. Here, the

Pre-trial Statement.

defendant, using the name of Todd R. Moni only, ordered merchandise via the mails and asked that it be charged to his American Express Credit Card. Those mail order houses whose addresses are contained on Schedule II then mailed the merchandise to him at 1331 Clinton Street, Buffalo, New York. That schedule also sets forth the dates and location of the mail order house, the item ordered and its value.

In each of these situations, the American Express Credit Card was never in existence. That is to say, the American Express Company has no record of a subscriber by the names of Todd R. Moni, Michael Mattison or James M. Mattison, nor do they have a record of any other subscribers being assigned to the credit card numbers used by the defendant.

The proof would further show that the airlines and the mail order houses forwarded to the American Express Company bills for payment. Ultimately the American Express Company notified Allegheny Airlines, Inc. and the various mail order houses that the defendant was not a subscriber of theirs and it refused to pay the airlines and the various mail order houses, thereby resulting in a loss to the airlines of some \$5,900 within a period of less than a year and a loss to the various mail order houses aggregating \$690.52 within a period of less than a year.

DATED: Buffalo, New York, February 24, 1976

Respectfully submitted,

RICHARD J. ARCARA
United States Attorney
Western District of New York
Office and P.O. Address
502 United States Courthouse
Buffalo, New York 14202

By:

ROBERT P. WHEELER
Assistant United States Attorney,
of Counsel

Pre-trial Statement.

Frank Jay

EXHIBIT 1

Attachment A KMA

*(2) 10-2-75**Slide 1*

<u>Date of Validation</u>	<u>Ticket Number</u>	<u>Destination</u>	<u>Total Fare</u>
03 SEP 74	037-4442-208-669	Minneapolis	\$ 139.27
22 SEP 74	-219-294	St. Louis	97.27
06 OCT 74	-227-093	Toronto	32.05
06 OCT 74	-227-094	Toronto	32.05
17 OCT 74	-232-904	Toronto	43.93
07 NOV 74	-251-772	Kansas City	165.47
08 NOV 74	-253-185	Kansas City	165.47
23 NOV 74	-271-353	Syracuse	26.37
23 NOV 74	-271-354	Syracuse	26.37
10 DEC 74	-298-424	Atlanta	210.10
10 DEC 74	-298-425	Atlanta	210.10
27 DEC 74	-305-822	JFK, NY	54.73
27 DEC 74	-305-822	JFK, NY	54.73
27 DEC 74	-305-863	Toronto	43.93
27 DEC 74	-305-864	Toronto	43.93
30 DEC 74	-305-960	Tampa	304.88
30 DEC 74	-306-962	Tampa	304.88
20 JAN 75	-315-459	Winnipeg	273.97
20 JAN 75	-315-460	Winnipeg	273.97
03 APR 75	-355-602	Montreal	123.87
17 APR 75	037-4441-000-725	Vancouver	478.17
17 APR 75	-000-726	Vancouver	478.17
20 MAY 75	-023-622	Tampa	255.47
20 MAY 75	-023-693	Tampa	255.47
16 JUN 75	-041-336	Tampa	255.47
16 JUN 75	-041-337	Tampa	255.47
21 JUN 75	-047-331	Tampa	255.47
21 JUN 75	-047-332	Tampa	255.47
26 JUL 75	-067-320	Vancouver	559.09
26 JUL 75	-067-321	Vancouver	559.09

TOTAL

\$6,234.68*291.18*
05043 48

Pre-trial Statement.

Exhibit II

Buffalo, New York 14240

C.M. Horn, Jr.

241-46217-F

October 21, 1975

Mr. Roger P. Williams
Assistant U.S. Attorney
United States Courthouse
Buffalo, New York 14202

Dear Mr. Williams:

Herewith are details relating to the ordering of merchandise through the mail by Robert Monin.

✓ On or about April 14, 1975, Hanover House, Hanover, PA 17331, received a mail order from Todd R. Moni for a men's back brace valued at \$9.99. On April 16, 1975, Hanover House mailed this item to Moni at 1331 Clinton Street, Buffalo, NY 14205. This item was charged to American Express Credit Card No. 040-072-493-6.

✓ On June 11, 1975, Hanover House mailed a battery re-charger and plastic pourers valued at \$11.43 to Moni at the same address. These items were charged to American Express Credit Card No. 040-073-492-6.

✓ On July 23, 1975, Hanover House mailed an obsolete coin set valued at \$11.95 to Moni at the same address. This item was charged to American Express Credit Card No. 040-493-072-6.

✓ On August 18, 1975, Hanover House mailed a Biomate Computer valued at \$9.99 to Moni at the same address. This item was charged to American Express Credit Card No. 040-493-072-6.

The original order forms are not available as they are destroyed when the order is filled, however, an official of Hanover House can testify that all orders were received by mail and the items were mailed to Moni.

✓ On May 14, 1975, Monin mailed an order for merchandise to Harriet Carter, Dept. 51, Plymouth Meeting, PA 19062. On May 30, 1975, an indoor plant light valued at \$14.99 was shipped to Todd Moni via United Parcel Service. This item was charged to American Express Credit Card No. 040-072-493-6.

On July 7, 1975, an order was mailed to Harriet Carter in the name of Todd R. Moni. The merchandise on the order was valued at \$24.91 and was to be charged to American Express Credit Card No. 040-072-493-6-106. The order was not filled because it was determined by the firm that the credit card number was not valid.

Pre-trial Statement.

Mr. Roger P. Williams

241-46217-F

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On July 11, 1975 an order was mailed to Harriet Carter in the name of Todd R. Monti. The merchandise on the order was valued at \$22.96 and was to be charged to American Express Credit Card No. 040-073-492-6100. The order was not filled.

On August 7, 1975, an order was mailed to Harriet Carter in the name of Todd Robert Monti. The merchandise on the order was valued at \$25.95 and was to be charged to American Express Credit Card No. 043-496-692-6-100. This order was not filled.

The originals of these four orders have been forwarded to the Postal Inspection Service Crime Lab for handwriting examination.

✓ On or about February 3, 1975, a mail order request in the name of Todd R. Monti was received by Air Canada Boutique, P.O. Box 9, 747, Richmond Hill, Ontario, Canada L4B 2B8. The merchandise on this order was valued at \$39.65 and was charged to American Express Credit Card No. 040-072-492-6-100. The merchandise was mailed to 1331 Clinton Place, Apt. #1, Buffalo, NY 14206 on February 5, 1975.

✓ On or about February 3, 1975, a mail order request in the name of Todd R. Monti was received by the Air Canada Boutique. The merchandise on the order was valued at \$72.90 and was charged to American Express Credit Card No. 040-072-493-6-100. The merchandise was mailed on February 5, 1975 to the same address.

✓ On May 12, 1975, an order was mailed to Air Canada Boutique in the name of Todd R. Monti. The merchandise on the order was valued at \$68.85 and was charged to American Express Credit Card No. 040-073-496-6-100. This merchandise was mailed on May 27, 1975 to the same address.

✓ On April 16, 1975, an order was mailed to Air Canada Boutique in the name of Todd Robert Monti. The merchandise on the order was valued at \$99.95 and was charged to American Express Credit Card No. 040-072-493-6-100. The merchandise was mailed on April 30, 1975 to the same address.

✓ On April 16, 1975, an order was mailed to Air Canada Boutique in the name of Todd Robert Monti. The merchandise on the order was valued at \$84.90 and was charged to American Express Credit Card No. 040-072-493-6-100. The merchandise was mailed on April 30, 1975 to the same address.

The originals of these five orders have been forwarded to the Postal Inspection Service Crime Lab for handwriting examination.

On or about February 7, 1975, a mail order was received by Taylor Gifts, 355 E. Conestoga Rd., Strafford, Wayne, PA 19087 in the name of Todd R. Monti. The merchandise on the order was valued at \$74.93 and was to be

Pre-trial Statement.

Mr. Roger A. Williams

241-46217-F

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charged to American Express Credit Card No. 040-072-493-6100. This order was not filled as the firm determined that the credit card number was not valid.

On or about March 7, 1975, a mail order was received by Taylor Gifts in the name of Todd R. Noni. The merchandise on the order was valued at \$74.98 and was to be charged to American Express Credit Card No. 040-072-493-6100. This order was not filled.

✓ On or about July 24, 1975, a mail order was received by Taylor Gifts in the name of Todd Robert Noni. The merchandise on the order was valued at \$29.94 and was charged to American Express Credit Card No. 043-496-692-6100. The merchandise was mailed to 1331 Clinton St., Buffalo, NY 14206 on July 24, 1975.

✓ On or about July 31, 1975, a mail order was received by Taylor Gifts in the name of Todd Robert Noni. The merchandise on the order was valued at \$31.79 and was charged to American Express Credit Card No. 043-496-692-6100. The merchandise was mailed to the same address on July 31, 1975.

The originals of the orders received on February 7 and March 7, 1975 have been forwarded to the Postal Inspection Service Crime Lab for handwriting examination.

✓ On August 7, 1975, an order was mailed to The Great American Gift Catalog, P.O. Box 1775, West Des Moines, Iowa 50265 in the name of Todd R. Noni. The merchandise on the order was valued at \$31.00 and was charged to American Express Credit Card No. 443-073-492-6100. On or about August 14, 1975 this order was forwarded to Greenland Studios, 4500 NW 135th St., Miami, FL 33054 and the merchandise on the order was mailed to 1331 Clinton Place, Buffalo, NY 14206 on or about August 21, 1975.

The original of this order has been forwarded to the Postal Inspection Service Crime Lab for handwriting examination.

✓ On or about April 7, 1975, an order was received by mail in the name of Todd R. Noni by Greyhound Gift House, 1201 Milan Dairy Rd., Miami, FL 33126. The merchandise on the order was valued at \$172.55 and was charged to American Express Credit Card No. 040-072-493-6100. The merchandise was shipped via United Parcel Service on or about April 24, 1975 to 1331 Clinton Place, Buffalo, NY 14206.

The original of this order was destroyed, however, a company official can testify that it was the usual practice for Greyhound Gift House to receive all its orders through the mail.

[Signature]
G.H. Hara, Jr.
Postmaster

BEST COPY AVAILABLE

Suppression Hearing.

Testimony of Clifton M. Harm, Jr.

1 and I have misplaced the original, I
2 will hand up a copy at this time so the
3 Court has it in the file for future
4 reference.

5 THE COURT: All right.

6
7 DIRECT EXAMINATION BY MR. WILLIAMS:

8 Q. Mr. Harm, you are a postal investigator?

9 A. Yes, I am.

10 Q. Or an inspector?

11 A. Postal inspector.

12 Q. And you have been one for a period of time?

13 A. Approximately eight and a half years.

14 Q. And you have been in Buffalo for how long?

15 A. Approximately seven years.

16 Q. All right, sir. Directing your attention to September
17 10 of last year, did you have occasion to go to premises
18 known as 1331 Clinton Street in the City of Buffalo?

19 A. Yes, I did.

20 Q. About what time did you arrive there?

21 A. At approximately ten minutes to 2:00 in the afternoon.

22 Q. All right, sir.

23
24 THE COURT: What date is this?

25 MR. WILLIAMS: September 10, 1975.

Testimony of Clifton M. Harm, Jr.

1 BY MR. WILLIAMS:

2 Q. Now, when you went there, who were you looking for?

3 A. I was looking for an individual who used the name Todd
4 Moni.

5 Q. Prior to going there on that occasion, I take it you
6 had some information respecting Todd Moni?

7 A. Yes, we had received information from Allegheny Airlines
8 that someone using the name Todd Moni, who resided at
9 1331 Clinton Street, Buffalo, was obtaining airline
10 tickets from Allegheny Airlines using an American Express
11 credit card number which American Express had no record
12 of.

13 Q. All right, sir. Approximately how long had you been
14 involved in that investigation at that point?

15 A. Approximately three and a half months.

16 Q. All right, sir. Now, physically, can you describe the
17 premises at 1331, that is to say, is it a one-family,
18 multiple-family dwelling?

19 A. It is a multiple-family dwelling or two apartments on
20 the second floor, there is a laundromat on the first
21 floor.

22 Q. And were you able to determine in which unit Mr. Monin
23 resided?

24 A. Yes. He resided in the apartment on the left or the
25 rear on the second floor.

Testimony of Clifton M. Harm, Jr.

Q. All right, sir. Now, you say you advised him of his Constitutional rights; can you tell the Court, please, what you said to him?

A. I read from the warning and waiver form, which he ultimately signed.

Q. Did you read that verbatim?

A. Yes, I did.

MR. WILLIAMS: Let me hand up a list of Government's exhibits I have prepared. I have given a copy to defense counsel.

BY MR. WILLIAMS:

Q. Mr. Harm, showing you what has been marked Government's Exhibit 2 for the purposes of this hearing, sir, have you seen that before?

A. Yes, I have.

Q. Does your signature appear thereon?

A. Yes.

Q. Is that the form you read to Mr. Moni?

A. Yes.

Q. Did you do that verbatim?

A. Yes.

Q. Do you see Mr. Moni in the courtroom?

A. Yes, I do.

Testimony of Clifton M. Harm, Jr.

New York. The date is September 10, 1975. Time 1:55 p.m.

Q. All right, sir. Did you have occasion to ask him questions at that point?

A. Yes, I did.

Q. All right. What, if anything, did you ask him and what, if any, response did you receive from Mr. Moni?

A. Basically, the questions related to whether he knew anything about the tickets that had been mailed to that address, whether he, in fact, had received them or used them. He initially denied knowing anything about it. We told him we knew that a ticket had been delivered within the last one or two days and we knew that he had it, at which point he did admit receiving those particular tickets and, in addition, he stated that he had been receiving tickets for approximately a year by the use of a fictitious American Express credit card number.

Q. Did he say anything else at that point that you recall?

A. He stated that he knew what he was doing was wrong and he was kind of glad it was over.

Q. All right, sir. Now, you said you were in the living room?

A. Yes.

Q. And can you give us your best estimate as to the size of the living room?

Testimony of Clifton M. Harm, Jr.

- 1 A. I would say approximately ten by fifteen feet.
- 2 Q. All right. Was there furniture in the living room?
- 3 A. There was an ironing board in the middle of the floor
- 4 and the entire room was cluttered with papers and
- 5 envelopes, a pile of coins, and I believe there were
- 6 a few tables in the room, but nothing substantial.
- 7 Q. All right, sir. During the period of time that you were
- 8 talking with Mr. Monin, did you look at any of these
- 9 papers and things that were laying around?
- 10 A. Yes, we were able to see everything that was lying on
- 11 the floor.
- 12 Q. Can you tell us some of the things that you saw lying
- 13 on the floor?
- 14 A. Airline tickets, envelopes with return address of
- 15 Allegheny Airlines, reserved seat tickets, ticket
- 16 envelopes such as you would receive when you check in
- 17 on a boarding date, things of that nature.
- 18 Q. All right, sir. Did there come a time when you retrieved
- 19 any of those items?
- 20 A. Yes, we did. We asked Mr. Monin if he would give us
- 21 his permission to search his apartment. We told him --
- 22 Q. Can you tell us, as best you recall, what you said to
- 23 him?
- 24 A. As best as I can recall, we told him that we were
- 25 asking for permission, that he did not have to give us

Testimony of Clifton M. Harm, Jr.

1 permission, if we did find anything we could use it
2 against him in a court.

3 Q. All right, sir. What, if anything, did he say?

4 A. He gave us permission to look around.

5 Q. Do you remember his exact words or can you paraphrase
6 his words?

7 A. No, I really can't.

8 Q. All right, sir. Did you then look around?

9 A. Yes, Inspector Traub looked around mainly in the living
10 room while I was obtaining handwriting specimens from
11 Mr. Moni.

12 Q. Did you observe Mr. Traub as he was looking around the
13 living room?

14 A. Yes, I did.

15 Q. Were you able to observe him retrieving certain airline
16 coupons, envelopes, that kind of thing?

17 A. Yes.

18 Q. All right, sir. Now, did you make any notes relative
19 to your visit to 1331 Clinton Street that afternoon?

20 A. Yes, I did.

21 Q. All right, sir. Showing you, Mr. Harm, what has been
22 marked as Government's Exhibit 4 for purposes of this
23 hearing, I ask you, sir, if you recognize that exhibit?

24 A. Yes, these are notes that I made subsequent to talking
25 to Mr. Moni on September 10, 1975.

Testimony of Clifton M. Harm, Jr.

- 1 A. I had Mr. Moni initial and date each piece that we took.
- 2 Q. That was done at your direction?
- 3 A. Yes.
- 4 Q. And, for example, the first item in this exhibit has
- 5 the initials T.R.M., 9/10/75?
- 6 A. Yes.
- 7 Q. Are those Mr. Moni's initials, T.R.M.?
- 8 A. Yes.
- 9 Q. That was put on there in your presence?
- 10 A. Yes, it was.
- 11 Q. All right, sir. Did you ever advise Mr. Moni that he
- 12 was under arrest?
- 13 A. No, we did not.
- 14 Q. There came a time that you left that day, I take it?
- 15 A. Yes. We left his apartment at approximately 2:30 p.m.
- 16 Q. All right, sir. And did you have any conversation with
- 17 him prior to your leaving?
- 18 A. Yes, I did. Prior to our leaving I served a grand jury
- 19 subpoena on Mr. Moni, the purpose being to insure his
- 20 coming to my office within the next day or so to further
- 21 discuss this problem.
- 22 Q. Did you have some conversation about going to your
- 23 office the next day?
- 24 A. Yes. When we arrived at his apartment, he stated he
- 25 normally left for work about 2:30 and, as it got near

Testimony of Clifton M. Harm, Jr.

- 1 2:30, we told him we did not want to keep him from work,
2 I would like him to come to my office the next day.
3 Q. Did you tell him why?
4 A. Yes, so we could further discuss the problem. I asked
5 him if he would give me a statement at that time and he
6 said he would.
7 Q. All right, sir. What was your purpose in serving him
8 with the grand jury subpoena at that time?
9 A. To insure that he would appear as he had been requested.
10 Q. All right, sir. Did he appear the next day?
11 A. No. He called at approximately 9:00 o'clock in the
12 morning and stated that he was ill and asked if he
13 could come in the following day, September 12th, and I
14 said yes.
15 Q. Did he come to your office on that date?
16 A. Yes, he did.
17 Q. All right, sir. Now, getting back to September 10th,
18 Mr. Harm, how long were you in his presence?
19 A. Approximately thirty-five to forty minutes.
20 Q. All right, sir. Now, have you ever had occasion to
21 observe people under the influence of alcohol?
22 A. Yes.
23 Q. Under the influence of drugs?
24 A. Yes.
25 Q. As a layman, did you have any opinion whether he was

Testimony of Clifton M. Harm, Jr.

1 under the influence of either?

2 A. I would say he was not.

3 Q. All right, sir. Did he appear to behave in any peculiar
4 fashion?

5 A. No.

6 Q. Did you ever threaten him in any way?

7 A. No, I did not.

8 Q. Did you ever make any promises to him?

9 A. No.

10 Q. All right, sir. Now, what time did he appear in your
11 office on the 12th of September?

12 A. Approximately the time that would be on the warning and
13 waiver form, I don't recall offhand.

14 Q. All right, sir. And what happened when he arrived on
15 that date?

16 A. I again advised him of his Constitutional rights orally,
17 gave him a second form and requested that he read it,
18 and asked him if he understood it, and then when he said
19 yes, I asked him if he would sign it, which he did.

20 Q. Now, when you say you advised him of his Constitutional
21 rights, did you read from some document?

22 A. Yes, I read from the warning and waiver form, the same
23 form that we had used on September 10th.

24 Q. I will show you Government's Exhibit 3 for identification
25 for the purposes of this hearing, is that the advice

Testimony of Clifton M. Harm, Jr.

1 of rights and waiver form that you read to Mr. Monin on
2 that date?

3 A. Yes.

4 Q. Did you read that to him verbatim?

5 A. Yes.

6 Q. Did he sign that?

7 A. Yes.

8 Q. Your signature appears thereon as a witness?

9 A. Yes.

10 Q. What time was that?

11 A. 8:50 a.m., September 12th.

12 Q. All right, sir. Did you ever ask him whether or not
13 he understood his rights?

14 A. Yes, I did.

15 Q. What, if anything, did he say?

16 A. He said he did.

17 Q. All right, sir. Did you then put some questions to
18 him?

19 A. Yes.

20 Q. What, if anything, did you ask him and what response
21 did you get?

22 A. We again discussed the allegations made by Allegheny
23 Airlines, and I also asked him if he had ordered any
24 merchandise through the mail and he replied that he had,
25 using an American Express credit card number and also

Testimony of Clifton M. Harm, Jr.

1 a Bank Americard number that did not exist.

2 Q. Did there come a time on that date when he prepared a
3 written statement?

4 A. Yes.

5 Q. All right, sir. And how long did you talk to Mr. Monin
6 before that statement was prepared?

7 A. I would say no more than twenty minutes.

8 Q. All right, sir. Was that a typed or handwritten
9 statement?

10 A. Handwritten by Mr. Monin.

11 Q. All right, sir. Let me show you Government's Exhibit 5
12 for identification for the purposes of this hearing,
13 Mr. Harm, and ask you if you recognize that?

14 A. Yes, this is a photocopy of the statement given by
15 Mr. Monin on September 12th.

16 Q. All right, sir. And I think you testified that that
17 is in his own hand?

18 A. Yes.

19 Q. Did he sign that in your presence?

20 A. Yes, he did.

21 Q. All right, sir. Prior to taking that statement, at
22 anytime on that day did you ever threaten him in any
23 way?

24 A. No.

25 Q. Did you ever make any promises to him?

Testimony of Clifton M. Harm, Jr.

1 tickets, he denied that?

2 A. Yes.

3 Q. And then shortly thereafter he admitted it?

4 A. That is correct.

5 Q. And between the time he denied it and the time he
6 admitted it, could you again go over what transpired,
7 to the best of your recollection?

8 A. Basically, we told him that we knew that tickets had
9 been delivered within the last day or two right into
10 his mailbox, and had not been returned to the Post
11 Office or to Allegheny Airlines, and we felt that he
12 had them, at which time then he admitted receiving the
13 tickets.

14 Q. Did you tell him that you felt he had that or you knew?

15 A. We told him we knew he had them.

16 Q. And your basis for that knowledge was, as you say, that--
17 what was your basis for that knowledge?

18 A. The basis for it was the fact that we knew the letter
19 carrier had deposited them into his mailbox and there
20 had been no complaint of loss, the tickets had never
21 found their way back to the Post Office or Allegheny
22 Airlines.

23 Q. In other words, you had definite knowledge from the
24 letter carrier that the tickets had been delivered to
25 the mailbox?

Testimony of Clifton M. Harm, Jr.

1 Q. In other words, all those notes, both pages, refer to
2 conversations you had on the 10th with the defendant?

3 A. Yes.

4 Q. Let me ask you, I notice this part is in a different
5 ink, is there a reason for that?

6 A. Inspector Traub and myself sat down and wrote these
7 things together, I did the writing, we talked them over
8 and, as he read them, he wrote that part in as he
9 remembered it, as he was reading it.

10 Q. Now, one part of it which Mr. Williams also called
11 attention to, according to this, "L.C.T. --" Mr. Traub?

12 A. Yes.

13 Q. --"requested permission to look around his apartment --
14 presumably the defendant's -- and told him he had the
15 right to refuse permission, Moni willingly gave permis-
16 sion." Do you recall specifically that conversation
17 that Mr. Traub had with the defendant?

18 A. Specifically, word for word, no. However, he did
19 request permission, told him that he did not have to
20 give his permission, that anything we found we could
21 use against him in court.

22 Q. In court. Did either you or Mr. Traub make any explicit
23 reference to a criminal trial or criminal proceedings?

24 A. Other than the fact that -- yes, we did. I told him
25 that this would fall under the mail fraud statute.

Testimony of Robert L. Monin.

- 1 Q. You then talked to Mr. Harm and gave him information
2 about tickets that you purchased and other matters?
3 A. I did.
4 Q. All right, sir. And I know you don't recall the date,
5 but if the testimony was and the evidence indicates
6 that you went to Mr. Harm's office at the Post Office
7 Building on William Street on September 12th of 1975,
8 you wouldn't quarrel with that?
9 A. No, I wouldn't.
10 Q. And with reference to Government's Exhibit 3, that is
11 your signature on that advice of rights form?
12 A. Yes, it is.
13 Q. And Government's Exhibit 5, which purports to be a
14 statement taken from you, and while this is a Xeroxed
15 copy, is that your signature that appears on Page 2?
16 A. I can remember Mr. Harm telling me whenever I scratched
17 anything out to put my initials above it so they would
18 know I scratched it out.
19 Q. So that is your own handwriting?
20 A. Yes.
21 Q. There is no question that that is not an accurate
22 statement in your mind, is there?
23 A. No. As I told Mr. Harm, I didn't remember the times
24 and dates I had gone or the ticket numbers. Who can
25 memorize that, but I remember I ordered tickets, that

Testimony of Robert L. Monin.

1 I had gone to place the tickets indicated, and that
2 had been, you know, specific dates and times I could not
3 remember.

4 Q. In other words, when you wrote that statement, what you
5 did was sit down and go over different airline tickets
6 and you told Mr. Harm, 'Yes, that was a ticket I
7 ordered, that was charged to American Express', right?

8 A. Yes.

9 Q. Okay. Part of the statement refers to the fact that you
10 had ordered different merchandise from various different
11 mail order houses?

12 A. Yes, the last paragraph.

13 Q. Including -- well, let's see -- Harriet Carter Gifts,
14 Greyhound Gift House, Hanover House, Great American
15 Gift Catalogue, Taylor's Gifts, there is no question
16 you ordered merchandise?

17 A. There is no question I ordered merchandise.

18 Q. You used an American Express credit card number to
19 order that merchandise?

20 A. Yes.

21 Q. Now, you, yourself, never had an American Express
22 card, correct?

23 A. No, I did not.

24 Q. And with respect to the airline tickets, as I understand
25 it, what you did is call the airlines and order tickets,

Testimony of Robert L. Monin.

1 for example, to Vancouver, British Columbia, and state
2 that you want to charge it to your American Express
3 credit card, your name was Todd Moni, you gave them
4 an American Express credit card number?

5 A. That is correct.

6 Q. Is that basically how you ordered the merchandise from
7 these different mail catalog houses?

8 A. Specifically I don't remember. I might have sent through
9 the mail a number or I could have called them.

10 Q. Mr. Moni, some of these American Express credit card
11 numbers that you utilized you got from an advertisement?

12 A. It was an advertisement that they generally distribute
13 in the magazines. Other ones I just made up. The number
14 didn't have much significance at all. It seems that
15 Allegheny Airlines would send me a ticket no matter what
16 number I gave them. It wasn't important. At first it
17 was because I wanted an American Express card, after
18 that it didn't -- the situation became confused in my
19 mind.

20 Q. All right, sir. Now, I'm going to show you what has
21 been marked Government's Exhibit 1, Mr. Moni, and I want
22 you to look through those. Do you see your initials
23 and date on those?

24 A. Yes, I do. I can remember dating those and initialing
25 them.

Testimony of Robert L. Monin.

- 1 Q. And those were found in your living room?
- 2 A. Probably, they could have been anywhere in the house.
- 3 Q. Lying on the floor, lying on furniture, on top of desks,
- 4 on top of tables?
- 5 A. Yes.
- 6 Q. Are those the contents -- Government's Exhibit 1 --
- 7 are those all airline tickets that you at one time
- 8 ordered from Allegheny Airlines?
- 9 A. I think so. I believe they are, yes. Because -- yes.
- 10 To the best of my knowledge, if they hadn't been tickets--
- 11 there might have been a few I might have bought -- if
- 12 there was an American Express number, they would have
- 13 been the ones I ordered rather than anything I would
- 14 have bought.
- 15 Q. Whatever American Express credit card number you had,
- 16 that credit card number was never issued to you?
- 17 A. No, it was never given to me.
- 18
- 19 MR. WILLIAMS: Let the record reflect that Mr.
- 20 Moni has just gone through all of
- 21 Government's Exhibit 1.
- 22
- 23 BY MR. WILLIAMS:
- 24 Q. Do you recall, Mr. Moni, that on the first time you saw
- 25 Mr. Harm you asked him whether or not you were under

Testimony of Robert L. Monin.

1 arrest?

2 A. It seems to me just before he left Mr. Harm said -- he
3 handed me the subpoena -- and I think that was the
4 first time I really remember asking if they were going
5 to arrest me and --

6 Q. You knew from some prior experience, whether watching
7 television or otherwise, that when you are given the
8 so-called Miranda warnings, when you are advised that
9 you got the right to remain silent, you've got the
10 right to have an attorney, that we are talking about
11 some investigation involving criminal activity?

12 A. Well, actually what it was more like was the reality of
13 the situation --

14 Q. Can you answer the question yes or no?

15 A. Please repeat the question.

16 Q. You, either through watching television or reading or
17 talking to other people, knew that when someone tells
18 you you have the right to remain silent, you have the
19 right to an attorney, that we are talking about a situa-
20 tion where some criminal activity is being investigated,
21 right?

22 A. Yes. That was not the reason why --

23 Q. Can you answer yes or no?

24 A. No.

25 Q. Didn't you just before say yes?

Warning and Waiver of Rights dated September 10, 1975.

UNITED STATES POSTAL INSPECTION SERVICE WARNING AND WAIVER OF RIGHTS

Place: 1331 Clinton Street
Apt 1, Buffalo NY
Date: Sept 10, 1975 Time: 1:55 PM



WARNING

BEFORE YOU ARE ASKED ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.

- You have a right to remain silent.
- Anything you say can be used against you in court.
- You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.
- If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.
- If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER

I have read this statement of my rights (This statement of my rights has been read to me) and I understand what my rights are. I am willing to discuss subjects presented and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Tell Bahi M
(Signature)
1:55 9-10-75
(Time) (Date)

Witnessed by: C. M. G. H.
Title: Postal Inspector
Witnessed by: L. C. Traub
Title: Postal Inspector

Warning and Waiver of Rights dated September 12, 1975.

UNITED STATES POSTAL INSPECTION SERVICE

WARNING AND WAIVER OF RIGHTS

Place: 1200 William St Rm 214
Buffalo, NY 14240
 Date: 9/12/75 Time: 8:50 AM



WARNING

BEFORE YOU ARE ASKED ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.

- You have a right to remain silent.
- Anything you say can be used against you in court.
- You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.
- If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.
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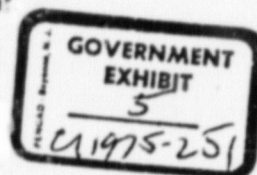
J. R. [Signature]
 (Signature)
8:50 A.M. 9-12-75
 (Time) (Date)

Witnessed by: [Signature]
 Title: Postal Inspector
 Witnessed by: L. C. [Signature]
 Title: Postal Inspector

STATE OF New York
County Of Erie

28
Monin's Statement

SS:



I, ROBERT C. MONIN, ALSO KNOWN AS TODD MONI, FIRST BEING
DULY SWORN, DEPOSE AND STATE

I HAVE BEEN ADVISED BY POSTAL INSPECTOR C.M. HARM, JR. OF MY
CONSTITUTIONAL RIGHTS. I AM AWARE THAT I NEED NOT MAKE ANY
STATEMENT OF ANY KIND AND THAT ANY STATEMENT I DO MAKE
MAY BE USED AGAINST ME IN A COURT OF LAW. I AM ALSO
AWARE THAT I HAVE A RIGHT TO HAVE A LAWYER PRESENT AT
THIS INTERVIEW AND THAT IF I AM UNABLE TO AFFORD ONE, A
LAWYER WILL BE APPOINTED TO REPRESENT ME. KNOWING ALL
THESE THINGS, I GIVE THIS STATEMENT OF MY OWN FREE WILL,
WITHOUT ANY THREATS OR PROMISES BEING MADE TO ME.

SOME TIME IN SEPTEMBER ¹⁹⁷⁴ ~~1975~~ I BEGAN ORDERING AIRLINE
TICKETS FROM ALLEGHENY AIRLINES USING AN AMERICAN EXPRESS CARD
NUMBER THAT I OBTAINED FROM THE AMERICAN EXPRESS ADVERTISEMENT.
THIS WAS DONE BY PHONING ALLEGHENY RESERVATIONS AND
GIVING FLIGHT ^{RCM} ~~ATA~~ ARRANGEMENTS TO A TELEPHONE RESERVATIONIST
AND ASKING HER TO MAIL THE TICKETS TO ME AT MY HOME
ADDRESS; 1331 CLINTON STR., BUFFALO, N.Y. 14206. I WOULD
ASK HER TO ~~BE~~ SEND THEM TO TODD MONI, AND HAVE THE
TICKETS PLACED ON MY ABOVE MENTIONED CREDIT CARD
WITH THE NUMBER I HAD MADE UP.

I HAVE EXAMINED THE FOLLOWING ALLEGHENY AIRLINES PASSENGER
COUPONS: 037-4442-232-904 ; 037-444-023-692; 037-4442-306-960
037-4442-315-459 ; 037-4442-251-772 - THESE TICKETS WERE

RCM 9-12-75
28

Monin's Statement.

RLN
~~RE~~ RECEIVED BY MAIL AND WERE USED BY ME. I HAVE
 ALSO EXAMINED ALLEGHENY COUPON 037-4412-09-62, UNITED
 COUPON 016-4401-919-970, AND AMERICAN COUPON 001-4442-612871
 THESE TICKETS WERE REISSUED TO ME FOR ~~ORIGINAL~~ ^{RLN} ORIGINAL
 ALLEGHENY COUPONS ~~WHICH~~ ^{RLN} WHICH WERE RECEIVED THROUGH THE MAIL.
 I HAVE ALSO EXAMINED ~~THREE~~ ^{RLN} THREE ORIGINAL COUPONS WHICH
 REPRESENT FLIGHTS THAT I TOOK. THE NUMBERS ARE: 037-4442-
 315-460 ; 037-4442-251-772 ; 037-4442-253-185

I'VE ALSO ORDERED MERCHANDISE THROUGH THE MAIL
 USING ~~THE~~ ^{RLN} AMERICAN EXPRESS FROM THE FOLLOWING BUSINESS
 CONCERNS: ~~POLO~~ POLAROID CORP, CAMBRIDGE, MA.; POLAROID CORP,
 EL SEGUNDO, CA.; HARRIET CARTER GIFTS, MONTGOMERYVILLE, PA.;
 GREYHOUND GIFTS HOUSE, MIAMI, FL.; HANOVER HOUSE, HANOVER, PA.;
 GREAT AMERICAN GIFT CATALOG, MIAMI, FL.; TATION GIFTS, WAYNE,
 PA.

THIS STATEMENT IS TRUE TO THE BEST OF MY
 KNOWLEDGE.

~~RLN~~ Robert Louis Monin
 9-12-75

Subscribed and sworn to before me this 12th day of
 September, 1975 at Buffalo, NY.

CM [Signature]
 Postal Inspector

Witness - L. C. Trumb
 Postal Inspector

AFFIDAVIT OF SERVICE BY MAIL

State of New York)
County of Genesee) ss.:
City of Batavia)

RE: U.S.A. vs
Robert L. Monin, a/d/a/ Todd R.
Noni

No. 76-1400

I, Leslie R. Johnson being
duly sworn, say: I am over eighteen years of age
and an employee of the Batavia Times Publishing
Company, Batavia, New York.

On the 1st day of November, 19 76
I mailed copies of a printed Appellee in Brief & Appendix
the above case, in a sealed, postpaid wrapper, to:

10 copies by Air Mail, Special Delivery to:
A. Daniel Fusaro, Clerk,
United States Court of Appeals, Second Circuit
New Federal Court House, Foley Square
New York, New York 10007

2 copies to: Christopher Jones, Esq.
290 North Street
Buffalo, New York 14201

at the First Class Post Office in Batavia, New
York. The package was mailed Special Delivery at
about 4:00 P.M. on said date at the request of:

Richard J. Arcara, U.S. Attorney, Att: Roger P. Williams, Asst. U.S. Attorney
502 U.S. Courthouse, Buffalo, New York 14202

Leslie R. Johnson

Sworn to before me this

1st day of November, 19 76

Potter A. Lacey

POTTER A. LACEY
Notary Public, State of New York, Genesee County
My Commission Expires March 23, 1977